

# Chapter 1: The Need to Study the Montana Environmental Policy Act (MEPA)

## Introduction

With the enactment of the Montana Environmental Policy Act (MEPA) 29 years ago, the Legislature intended to ensure that state agencies think about the consequences of their actions before they act and that Montanans be informed of and be allowed to participate in state agencies' decisions that affect Montanans and the quality of Montana's human environment. Although the purposes of MEPA are laudable, MEPA itself has not been comprehensively reviewed and the implementation of MEPA has not been extensively analyzed and updated since 1988.

The 1999 Legislature debated the need for significant policy changes to MEPA. In the end, the Legislature concluded that the magnitude and complexity of MEPA implementation and policy issues deserved careful and deliberative study. As a result, the Legislature enacted Senate Joint Resolution No. 18 (SJR 18) (**Appendix A**) requesting the Legislative Environmental Quality Council (EQC) to give priority to the study of MEPA with the goals of:

- (1) evaluating and improving the MEPA process;
- (2) ensuring that the MEPA process results in state agencies making timely, efficient, informed, cost-effective, legally defensible, and ultimately better decisions; and
- (3) ensuring that the MEPA process results in government accountability and that Montanans are informed of and participate in state agency decisions.

The resolution requests that the EQC study include the following elements:

- U Determine whether the implementation of MEPA is achieving its intended purpose in fulfilling the policy set forth in statute.
- U Consider a broad range of MEPA issues, including but not limited to existing implementation, issues raised and debated in House Bill No.142 and Senate Bill No.413, identifiable costs and benefits of MEPA implementation, suggestions for improving MEPA, effective citizen participation, and an analysis of successful and efficient implementation of other similar national and state laws.
- U Actively solicit public and agency participation in the study process.

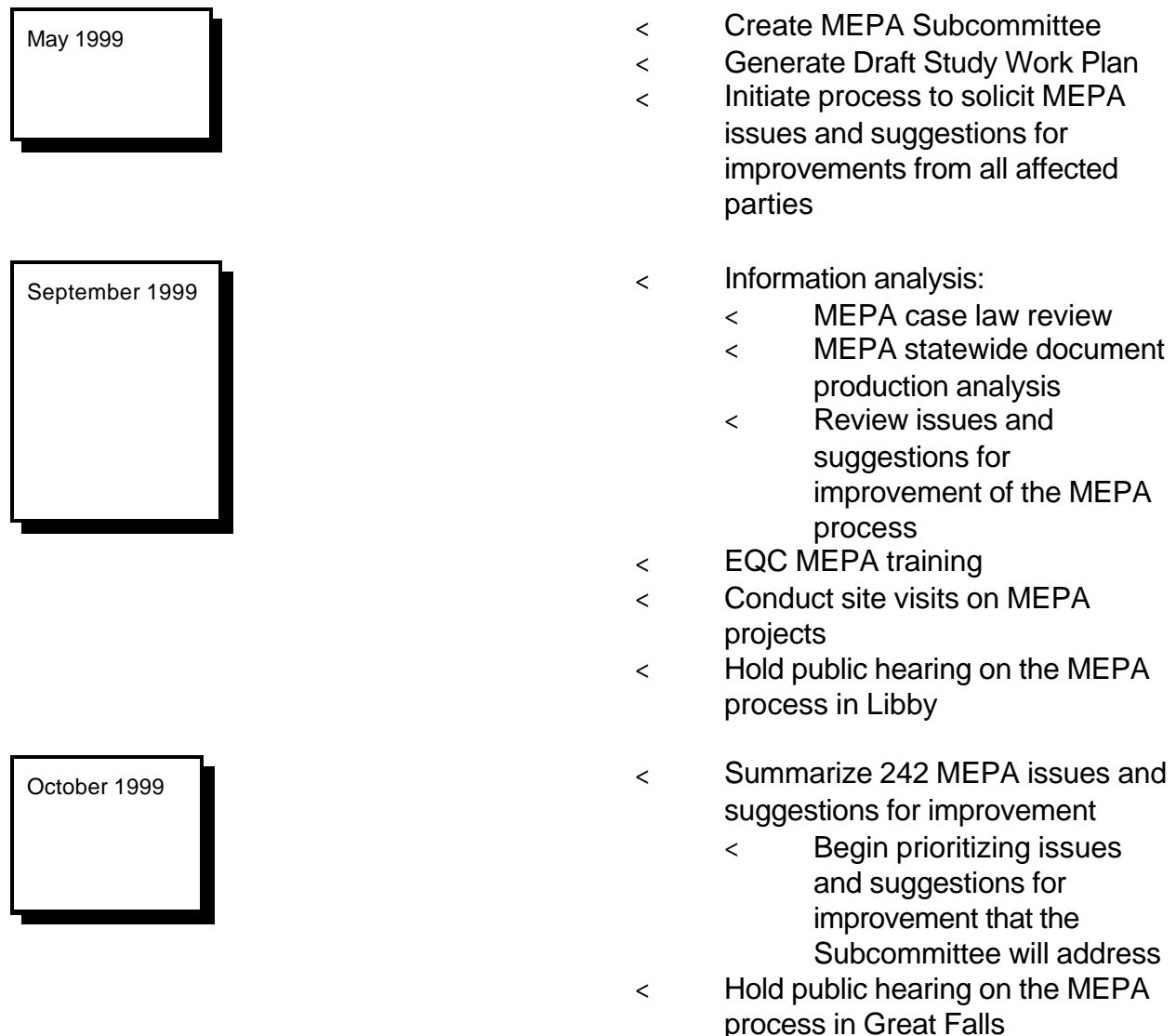
At the end of the legislative session, legislators were polled to determine which studies should receive a higher priority during the interim. This study was ranked 6th out of 24 studies in the legislator poll.

SJR 18 requests that the EQC prepare a report of its findings and conclusions and identify options and make recommendations, including legislation if appropriate, to the Governor and the 57th Legislature prior to September 30, 2000.

## The SJR 18 Study Process

To carry out the study requests of SJR 18, the EQC, in May 1999, created a seven-person bipartisan Subcommittee and allocated one full time employee to help staff the Subcommittee. The Subcommittee then adopted a study work plan that outlined the goals and tasks necessary to complete the study by September 30, 2000. The Subcommittee's work was submitted to the full EQC for review and approval. In addition, the Subcommittee held public hearings in Libby, Great Falls, Helena, Missoula, and Billings with a turnout of 132 individuals. The Subcommittee also identified 242 issues and suggestions for improvements from interested and affected parties (see **Appendix C**). **Figure 1-1** outlines the Subcommittee's SJR 18 study process throughout the interim.

**Figure 1-1. MEPA Subcommittee's Interim SJR 18 Study Process**



December 1999

- < Information and issue analysis:
  - < Agency panel discussions on substantive vs. procedural MEPA and MEPA implementation
  - < Other state environmental policy act review
  - < MEPA document number analysis
- < Prioritization of issues and suggestions for improving the MEPA process
- < Hold public hearing in Helena
- < Review proposal to evaluate public participation

January 2000

- < Information and issue analysis
  - < Develop cost-benefit measurement criteria for the MEPA process
  - < Review timeliness information
- < Review chapter 1 of the SJR 18 report
- < Send out MEPA public participation surveys
- < Hold public hearing on the MEPA process in Missoula

February 2000

- < Information and issue analysis

March 2000

- < Information and issue analysis
- < Preliminary discussion of findings and conclusions
- < Hold public hearing on MEPA process in Billings

April 2000

- < Subcommittee discussion and decision on findings and conclusions
- < Subcommittee discussion of recommendations

May 2000

- < Subcommittee discussion and preliminary decision on recommendations
- < Subcommittee review of draft report
- < Send out draft report for 30-day public comment period

July 2000

- < Compile public comments
- < Final EQC Subcommittee decision on any recommendations to the EQC
- < Subcommittee briefs EQC on the recommendations

September 2000

- < Final decision by the EQC on the study report and recommendations, including content of proposed legislation
- < Selection of bill sponsors if needed and development of session strategy

## EQC Response to SJR 18

The Legislature requested that the EQC complete a number of study goals and tasks. These study goals and tasks and how the EQC responded to them are set out below.

### ***SJR 18 Study Goals:***

**Study Goal:** Evaluate and improve the MEPA process.

**U** EQC Response: **Figure 1-1** sets out the EQC's efforts to openly and comprehensively evaluate the MEPA process. **Chapter 10** lists the EQC's findings and recommendations to improve the MEPA process.

**Study Goal:** Ensure that the MEPA process results in state agencies making timely, efficient, informed, cost-effective, legally defensible, and ultimately better decisions.

**U** EQC Response: The EQC, in conjunction with the interested and affected parties of the MEPA process, generated information through panel discussions, solicitation of issues and suggested improvements, public hearings, and staff research reports on the criteria required in this

study goal. Much of the information required in this study goal is discussed in this report.

**Study Goal:** Ensure that the MEPA process results in government accountability and that Montanans are informed of and participate in state agency decisions.

U EQC Response: The EQC, with the assistance of the Montana Consensus Council, conducted a very comprehensive survey of 250 affected parties and individuals to determine whether the MEPA process results in governmental accountability and whether Montanans are informed of and participate in state agency decisions. The Subcommittee also heard public comment on this study goal. **Chapter 9** discusses the results of these surveys.

***SJR 18 Assigned Study Tasks:***

**Study Task:** That the EQC, in consultation with any affected parties, seek to identify whether the current implementation of MEPA is achieving its intended purpose in fulfilling the policy set forth in statute.

U EQC Response: The EQC, through panel discussions, public hearings, targeted solicitation of interested and affected parties, and staff-generated and agency-generated reports, produced findings specific to this study goal that are set out in **Chapter 10**.

**Study Task:** Review and analyze existing implementation of MEPA.

U EQC Response: **Figure 1-1** sets out the EQC's efforts to openly and comprehensively evaluate the existing implementation of the MEPA process. Much of the information required in this study task is discussed in this report.

**Study Task:** Review and analyze issues raised and debated in House Bill No. 142 and Senate Bill No. 413.

U EQC Response: The EQC reviewed House Bill No. 142 and Senate Bill No. 413 issues and generated findings and recommendations in **Chapter 10** on this study task.

**Study Task:** Review and analyze any identifiable costs and benefits to agencies, permit applicants, citizens, and the human

environment resulting from compliance with the policy and purpose of MEPA.

- U EQC Response: **Chapter 7** analyzes the costs and benefits of the MEPA process.

**Study Task:** Review and analyze suggestions for improving the MEPA process.

- U EQC Response: The EQC actively solicited issues and suggestions from interested and affected parties across Montana. This effort resulted in 242 identified issues and suggestions for improvement (**Appendix C**) that guided the EQC's SJR 18 review effort.

**Study Task:** Review and analyze whether citizens are effectively participating in the MEPA decisionmaking process.

- U EQC Response: The EQC, with the assistance of the Montana Consensus Council, conducted a very comprehensive survey of 250 affected parties and individuals to determine whether the MEPA process results in governmental accountability and whether Montanans are informed of and participate in state agency decisions. The Subcommittee also heard public comment regarding this study task. **Chapter 9** discusses the results of these surveys.

**Study Task:** Review and analyze the successful and efficient implementation of other similar national and state laws.

- U EQC Response: **Chapter 5** reviews and analyzes other similar national and state laws.

**Study Task:** That the EQC actively solicit the participation of Montana citizens, groups, and individuals whose state-regulated activities are subject to MEPA review, of state and local officials, and of any other persons or groups with interest in the outcome of the study.

- U EQC Response: The EQC held public hearings in Libby, Great Falls, Helena, Missoula, and Billings, with a turnout of 132 individuals. The EQC actively solicited issues and suggestions from interested and affected parties across Montana. This effort resulted in 242 identified issues and suggestions for improvement (see **Appendix 3**) that guided the EQC's SJR 18 review

effort. The EQC also sent out 250 surveys to Montanans that attempt to evaluate the effectiveness of MEPA's public participation process. The EQC also sent this report out for a 30-day public comment period and received public comment on its findings and recommendations.

**Study Task:** That state agencies responsible for implementing MEPA fully cooperate and assist the EQC in this study.

U EQC Response: All of the agencies responsible for MEPA implementation have provided assistance with this study. Specifically, the EQC would like to thank DEQ, DNRC, FWP, MDT, DAg, DOC, and DOL for their assistance.

**Study Task:** That the EQC, prior to September 30, 2000, prepare a report of its findings and conclusions and identify options and make recommendations, including legislation if appropriate, to the Governor and the 57th Legislature.

U EQC Response: This report document fulfills this study task.

### ***EQC Assigned Additional Study Tasks***

**Study Task:** Train EQC members on the basics of MEPA implementation.

U EQC Response: EQC members received a 3-hour training seminar on MEPA implementation in September 1999.

**Study Task:** Review MEPA case law, develop summary briefs, and analyze legal trends that the Legislature may be able to address.

U EQC Response: **Chapter 4** analyzes MEPA case law trends and developments.

**Study Task:** Conduct site visits for a variety of MEPA reviews to get an on-the-ground understanding of what the MEPA process is evaluating.

U EQC Response: The Council conducted three site visits in Libby in September 1999.